

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MED:BOS:TL-N-5037-99
BJLaterman

date:

to: District Director, New England District
Attn: Charlie Marcou, Team Coordinator
Theresa Gorey, Case Manager, Group 1102

from: District Counsel, New England District, Boston

subject:

Form 872
Tax Year [REDACTED]
Fed. WH. Tax I.R.C. §§ 1441-1442

This is in response to your request that we provide advice regarding extending the statute of limitations for the above-mentioned corporation's taxable year [REDACTED] for federal withholding taxes.

[REDACTED] ([REDACTED]) is wholly owned by [REDACTED]. It filed its federal income tax returns as a member of the [REDACTED] consolidated group. [REDACTED] at some point, changed its name to [REDACTED] ([REDACTED]). Both the affiliation schedule of [REDACTED] consolidated return and the [REDACTED] Form 1042 (Annual Withholding Tax Return for U.S. Source Income of Foreign Persons) utilized the [REDACTED] name. You wish to extend the [REDACTED] Form 1042.

On [REDACTED], pursuant to a plan of liquidation, [REDACTED] was liquidated. All of [REDACTED]'s assets were distributed to [REDACTED], who also assumed all of [REDACTED]'s liabilities. On the date of liquidation, all of [REDACTED]'s stock was redeemed and canceled.

I.R.C. § 6901 provides that the liability at law or in equity of a transferee of property may be assessed and collected in the same manner as in the case of the taxes with respect to which the liability was incurred. The term "transferee" includes the shareholders of a dissolved corporation, the successor of a corporation, a party to a reorganization as defined in section 368 and all other classes of distributees. Treas. Reg.

§ 301.6901-1(b). As a general matter, anytime a corporation dissolves, it liquidates. Where a corporation disposes of all of its assets and then distributes the proceeds from the sale to its stockholders in liquidation or dissolution, the stockholder-distributees are "transferees". Vendiq v. Commissioner, 229 F.2d 93 (2d. Cir. 1956), aff'g 22 T.C. 1127 (1954); Fairless v. Commissioner, 67 F.2d 475 (6th Cir. 1933), aff'g 19 B.T.A. 304 (1930); Caire v. Commissioner, 101 F.2d 992 (5th Cir. 1932), aff'g 36 B.T.A. 1328 (1937); Foster v. Commissioner, 26 T.C.M. 1143 (1967), appeal dism'd (3d. Cir. 1969). See also Troy State University v. Commissioner, 62 T.C. 493 (1974).

██████████ was at all times a wholly owned subsidiary of ██████████. Upon liquidation of ██████████ all of its assets and liabilities were distributed to its sole shareholder. Therefore, ██████████ would be included in the term transferee. Treas. Reg. § 301.6901-1(b).

I.R.C. § 6901 does not create any separate liability but merely provides a method for enforcing such liability as may be created under other federal or state laws. Phillips v. Commissioner, 283 U.S. 589 (1931). The burden of proof is on the Government to establish transferee liability. The execution of a Transferee Agreement (Form 2045) in which an admission of transferee liability is made satisfies this burden.

Rev. Rul. 83-41, 1983-1 C.B. 399 provides that shareholders liable under I.R.C. § 6901 as transferees may sign consents for their own liabilities. Accordingly, ██████████, a shareholder and transferee of the assets of ██████████, may sign a Form 977 (Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift and Estate Tax Against a Transferee or Fiduciary).

The regulations under I.R.C. § 6501(c)(4) do not specify who may sign consents executed pursuant to that section. Accordingly, the Service will apply the rules applicable to the execution of the original returns to the execution of consents to extend the time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

In the case of corporate returns, I.R.C. § 6062 provides that a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. I.R.C. § 6064. However, any officer listed above

may sign a consent, whether or not that person was the same individual who signed the return. Rev. Rul. 84-165, 1984-2 C.B. 305. Consequently, the Forms 977 and 2045 should be signed by an officer of [REDACTED].

If we can be of any further assistance, please feel free to call the undersigned at (617) 565-7838.

BARRY J. LATERMAN
Special Litigation Assistant